

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 701

H. P. 1070

House of Representatives, February 12, 1947

Referred to Committee on Judiciary, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Muskie of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT Relating to Liability of Personal Sureties on Probate Bonds.

Be it enacted by the People of the State of Maine, as follows :

Sec. 1. R. S., c. 151, § 2-A, additional. Chapter 151 of the revised statutes is hereby amended by adding thereto a new section to be numbered 2-A, to read as follows :

Sec. 2-A. Liability of personal sureties on probate bonds.

I. Affidavit of personal sureties. Prior to such approval, each personal surety on any such bond shall execute and file with the court an affidavit that he owns real estate or an interest therein subject to execution, of a value over and above his liabilities, equal to the amount of the bond, and shall include in such affidavit the total amount of his obligations as surety on other official or statutory bonds. If the amount of his bond exceeds \$1,000, the affidavit shall also state

A. An adequate description of the real estate within the state offered by him as security and his interest therein, which identifies it sufficiently to establish the lien of the bond thereon as hereinafter provided ;

B. The total amount of the liens, unpaid taxes and other encumbrances against each property offered ;

C. The assessed value of such property offered, its market value and the value of the equity over and above all encumbrances, liens and unpaid taxes;

D. That the equity of such real estate offered is equal to the amount of the bond.

II. Investigation of bond by judge. Before giving approval the judge may require evidence as to the value and character of the assets of personal sureties.

III. Bond as lien on real estate of personal surety; recording of lien. Upon the approval of the bond of a personal surety, when the amount of such bond exceeds \$1,000, a lien on the real estate of the surety in this state, offered in the affidavit of the surety, shall arise as security for the performance of the obligation of the bond. The judge or the register of probate shall, before letters are issued to the personal representative, cause to be recorded in the office of the register of deeds of each county in which may be located any real estate as set forth in the affidavit of the surety, a statement signed by the judge or register of probate, giving a sufficient description of the land, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The register of deeds shall record such statement. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined.

IV. Release of personal surety who has given lien on real estate. If a personal surety who has given a lien on specific real estate as security applies to the court to have the lien released, the court shall order the release requested, if sufficient other real estate of the surety is substituted on the same terms and conditions as required for the lien to be discharged. If such personal surety who requests the release of the lien does not offer a lien on other real estate, the court shall order the principal or personal representative to offer other security within a reasonable time to be fixed in the order, and upon the approval of such new security the court shall order the discharge of such personal surety and his release from the lien.

V. Enforcement of lien. The real estate or interest therein of a personal surety against whom judgment has been rendered on any probate bond as to which a lien was created may be taken and sold on execution as provided in chapter 157 of the revised statutes as though there had been a general attachment of real estate under the writ as of its date in

the amount of its ad damnum and as though the real estate of the surety was subject only to such other liens and encumbrances as existed against said real estate when said probate lien was created.

VI. Recording of release of lien. The lien on the real estate of a personal surety shall be cancelled of record by the register of deeds upon filing with him a certified copy of the order duly discharging the surety or releasing the lien. Whenever the probate judge is satisfied the obligations of the principal in any probate bond have been performed he shall order such discharge and release.

VII. Recording fees. The register of deeds shall be entitled for each statement filed for recording under the provisions of this section and for each cancellation or discharge upon any such record, the same fees as for recording deeds and discharging mortgages, respectively.'

Sec. 2. Effective date of act. This act shall take effect January 1, 1948.